PRIVY COUNCIL REPORTS.

[PRIVY COUNCIL]
[Appeal from the Bombay High Court]
LORD MAUGHAM, SIR SHADI LAL AND SIR GEORGE RANKIN.
April 15, 1937.

THE JUPITER GENERAL INSURANCE CO., Ltd.....Appellants

vs.

ARDERSHIR BOMANJI SHROFF..Respondent.

Master and servant—Misconduct of employee—immediate dismissal—justification—Life insurance business—Single outbreak of temper on part of employee.

On the one hand it can only be in exceptional circumstances that an employer is acting properly in summarily dismissing an employee on his committing a single act of negligence; on the other hand, it cannot be said that a single outbreak of bad temper on the part of the employee accompanied with regrettable language is a sufficient ground for dismissal.

The test to be applied to see whether the misconduct of the employee is not such as to interfere with and to prejudice the safe and proper conduct of the business of the company and, therefore, to justify immediate dismissal, must vary with the nature of the business and the position held by the employee, and in this respect decisions in other cases are of little value. In case of life insurance business a mistake in accepting a risk may lead to a very considerable loss, and repetition of such mistakes may lead to disaster. The understanding is one in which the undertaking of each individual risk is necessarily hazardous; and it is only by unremiting care and prudence that the business can profitably be carried on. If an officer of a life insurance company, whatever his motive may be, withholds from his superiors information and *a fortiori* if it is one of exceptional character and magnitude, it would seem to be very difficult for his superiors to be confident that he will in the future properly carry out the important duties entrusted to him. In other words, if a person in charge of the life assurance department subject to the supervision of superior officers, shows by his conduct or his negligence that he can no longer command their confidence, and if when an explanation is called for he refuses apology or amendment, his immediate dismissal is justifiable.

R. P. Croom-Johnson, K.C. and P. Harvey, for the Appellants.

A. M. Dunne, K.C., Sir. T.J. Strangman and S. P. Khambatta, for the Respondent.

Cur. Ad. Vult.

The Judgment of the Board was delivered by—

LORD MAUGHAM:—This is an appeal from a judgment and decree of the High Court of Judicature at Bombay in its Appellate Jurisdiction, dated March 19, 1935. The judgment allowed in part the respondent's appeal from the decree of Mr. Justice Davar, dated August 23, 1934, and awarded him the sum of Rs. 17,000 as damages for wrongful dismissal from the service of the appellant company.

Various questions were argued in the Courts below; but the only question with which their Lordships find it necessary to deal is whether, assuming that upon the true construction of the contract of service between the parties, the respondent's employment was not terminable on one month's notice, the appellants were entitled summarily to dismiss the respondent from their service. In the view their Lordships take of the appeal it is unnecessary to express an opinion upon the true construction of the contract of service, or on the question as to the proper measure of damages, if any, were recoverable.

The appellants carry on a large insurance business in Bombay. A firm called Lalji Naranji and Co. are the managing agents and Mr. Lalji Naranji is or was the chairman of the Board of Directors of the appellants. A Mr. Mody was the managing governor and was authorised to do all the business of the company subject to the control of the managing agents. The respondent was at first in the service of the appellants from June 1, 1925 until June 1, 1926 as a canvasser. In May, 1928, the appellants opened a Life Insurance Department, and in that month, the respondent re-entered their service as manager of that department. His salary began at Rs. 200 a month. On January 24, 1930, after some other increases it was raised to Rs. 400 a month as from January 1, and by a letter of January 24, it was agreed that in the event of the life department showing certain annual increases in the business his salary would be gradually increased up to a maximum of Rs. 700 a month. The letter concluded by saying: "In the event of your not being able to fulfil the guarantee mentioned above, we have the right to terminate your enagement at any time thereafter by one month's prior notice of our intention to do so." The letter contained no other statement as to the notice to which the respondent was to be entitled if he was dismissed. It was contended on behalf of the respondent that upon the true construction of the letter he was entitled to continue in his employment for at least 3½years (afterwards extended to 4½ years) subject only to the right to terminate under the concluding paragraph of the letter, in the event of the so-called guarantee as to increase of business not being fulfilled. Their Lordships do not think it necessary to express any opinion on this part of the case.

The respondent was in fact dismissed from his employment on December 21, 1931, by a letter stating that his services were no longer required, and that the cashier had been instructed to pay him his salary for the current month, and also one month's salary in lieu of notice. The letter was signed by Mr. Mody as managing governor of the company; and both he and the secretary one month's salary in lieu of notice. The letter was written in that form out of consideration for the respondent, and in order that he should not find it difficult to obtain service elsewhere. Their Lordships were not persuaded that one month's

notice was sufficient unless the clause at the end of the letter of January 24, 1930, could be relied on, a question which depends on facts on which there have been findings in favour of the respondent. Their Lordships, therefore, must approach the matter as if the case was one of summary dismissal without notice, though clearly the position of the appellants is not worse than it would have been if no salary in lieu of notice had been paid.

The respondent at the trial and before their Lordships has placed much reliance on a circular bearing date October 31, 1929, and circulated among the superior officials of the company. It was prepared by Mr. Mody, who was therein described as the "Managing governor," for the guidance of the office establishment, and it stated that it had been found that no responsibility was fixed on any of the officers for any work and it had, therefore, been decided to divide the work in the manner mentioned. To the managing governor was allocated the business of fire, marine and accident (foreign and upcountry). To the secretary was allocated the business of fire, marine and accident (local business). There followed the words "the Life Department, both local and up-country, will be looked after by the secretary entirely." The circular stated that the company had two officers, namely, the managing governor and the secretary, and that the work of both these officers was supervised by the managing agents, and there were a number of other references to the duties of the managing governor. The respondent was not mentioned in the circular, nor was his position therein defined. The respondent has contended that the managing governor had no concern with the Life Insurance Department, and that he was entitled to resent any action by the managing governor in supervising that department as being officious and intermeddling. The trial Judge, however, refused to accept this view. The respondent was driven to admit in the course of cross-examination that the secretary, a Mr. Iyer, had to be in constant consultation with Mr. Mody about the details of the proposal for Life Insurance. Further a number of documents were produced in Court which showed Mr. Mody's habitual supervision of the Life Insurance business. Not only were the respondent's statements with reference to this matter thus proved to be ill-founded, but according to the learned Judge, he was driven to invent falsehoods in order to get over the effect of the documents. Moreover, in addition to the evidence given by Mr. Mody and Mr. Iyer, which, according to the learned Judge, stood unchallenged, there was evidence given by a Mr Shangji Narsingh Nagarmutt, the managing agent of several Indian insurance companies, who had been in constant touch with Mr. Mody, and that evidence satisfied the learned Judge beyond a doubt that the respondent's story that Mr. Mody was a figure-head in the office, so far as the Life Department was concerned, was a tissue of falsehood. Their Lordships have thought it right to mention these facts because so much reliance has been placed on the circular and its effect both by the respondent and by the learned Judges in the Appellate Court; but, for reasons which will appear later, they attribute only a minor importance to this matter.

The events which led up to the dismissal of the respondent can safely be taken from the evidence given by the appellants' witnesses. The trial Judge accepted their evidence, and he stated in unequivocal terms that not only had Mr. Mody and Mr. Iyer satisfied him that they were upright and straightforward gentlemen, but they had given their evidence fairly and well; and he further said that he disbelieved the respondent in every particular where his evidence was in conflict with theirs. It should be added that the judgment of the Appellate Court dealt with the appeal on the basis that the trial Judge's view of the facts had to be accepted. Their Lordships were not invited to take another view; but they think it right to add that in their opinion the learned Judge was fully justified in his remarks as to the relative credibility of the witnesses.

The material circumstances are as follows: On December 10, 1931, the appellants received by letter from the Bombay Mutual Life Assurance Society, Limited, an advice that they had received a proposal for life insurance from one Keshavji Manekchand, and the appellants were requested to re-insure the risk up to Rs. 10,000. This letter was immediately placed before Mr. Iyer, the secretary of the appellants' company, and was passed on by him in the ordinary course to Mr. Mody, who occupied the same room in the office as Mr. Iyer. It so happened that Mr. Mody was well acquainted with the life proposed to be insured, he having been a neighbour of his for ten years. Taking the view that Keshavji's life was not a good one, and that the re-insurance was not in the interest of the appellant company, he wrote the word "decline" on the letter of December 9, and initialled it. The letter and papers went back to the respondent as the branch manager of the Life Department.

On December 11 or 12, the respondent (in accordance with the usual practice) had an interview with Mr. Mody with reference to other life business, and he asked Mr. Mody what objection there was to the acceptance of the proposal, of the re-insurance on the life of Keshavji. Mr. Mody told him that Keshavji was his next door neighbour and a friend, and that he knew more about him than anyone in the office

did, and he did not want to entertain the proposal. The respondent started grumbling by saying that, if they refused proposals of that kind, they could not be expected to do a large business, to which Mr. Mody replied that he did not want his company to get into trouble by accepting such risks, and that he would not change his decision. Accordingly, on December 15, a letter was written to the Bombay Mutual Life Assurance Society declining the reinsurance proposition. It was prepared under the directions of the respondent, who initialled it, and it was signed on behalf of the appellants by Mr. Iyer.

On December 19, there was laid before Mr. Iyer a proposal for the direct life assurance of the same Keshavji for the sum of Rs. 50,000. The accompanying papers included a note initialled by the respondent recommending the issue of a 10 years' endowment policy. Mr. Iyer who habitually signed the appellants' letters on many subjects dealing sometimes with as many as 300 in a day, had no recollection of having signed the letter of December 15, refusing the proposal of re-insurance and the note initialled by the respondent recommending the acceptance of the risk did not contain any reference to this refusal nor to Mr. Mody's personal doubts as to the life proposed to be insured. On December 21, the respondent again brought the papers to Mr. Iyer, and pointed out that Mr. Lalji Naranji who was said to have been a friend of Keshavji, had written the word "accept" on the office note. The papers were left on Mr. Iyer's table, and the latter mentioned casually to Mr. Mody, who was in the office, that the appellants had accepted a direct insurance proposal for Rs. 50,000 on the life of Keshavji. Mr. Mody, who was surprised to find that Mr. Iyer had not been informed of the refusal by himself of the re-insurance proposal wrote the words "I am against this acceptance" on a slip which he attached to the papers and he sent them back to the respondent's department.

Mr. Mody then sent for the respondent, Mr. Iyer remaining in the room. Mr. Mody reminded the respondent of the previous re-insurance proposal and asked him why he had not made any reference to this fact in the note submitted to Mr. Iyer on December 19. Thereupon the respondent became very angry and told Mr. Mody that he had no business to ask him any question and added that Mr. Mody did not know how to behave himself. He then said: "I do not care for this job, and I can find such jobs anywhere." Mr. Iyer, who had kept silent, made a gesture suggesting that the respondent should be sent out of the room. Mr. Mody asked the respondent to leave but he declined. Mr. Mody then said "All right, stand," and on that the respondent left the room.

Mr. Mody and Mr. Iyer held a short consultation which resulted in the letter of dismissal being sent to the respondent.

In considering the importance of the incident, it should be added that the proposed risk was of an exceptional character, both as to amount and as to the age of the proposer. The practice of the office was not to insure persons above the age of 50, and Keshavji was 52 at this time. Further, the practice was not to remain liable on any life in respect of a sum exceeding Rs. 10,000 and it would, therefore, be necessary to re-insure for no less than Rs. 40,000. Having regard, however, to the fact that Keshavji was insuring his life for a large sum with the Bombay Mutual Life Assurance Society and that that Society has been unsuccessfully seeking to re-insure with the Company, it was obvious that a re-insurance to the amount of Rs. 40,000 in respect of such a life might be very difficult to obtain on satisfactory terms.

The Solicitors for the respondent made a claim against the appellants, and wrote some letters which will be referred to later. On March 29, 1932, the respondent commenced the present action, in which he claimed not only a considerable sum for damages for wrongful dismissal, but also certain sums for travelling expenses and overriding commission, to which he claimed to be entitled. The latter claims failed, and as already stated, the only matter with which their Lordship think it necessary to deal is that of alleged wrongful dismissal.

The trial of the action before Mr. Justice Davar occupied 15 days. A great part of this time was devoted to the unfounded claim for overriding commission. The respondent himself was in the witness-box for six days, but called no other witness. In coming to the conclusion that the claim for commission was unfounded the learned trial Judge, as already stated, found that the respondent in his evidence had invented false incidents, imagined interviews which never took place, placed falsehoods into the mouths of people whom he did not venture to call as witnesses, and had put forward a fraudulent document. With regard to the proposals for re-insurance and for direct insurance on the life of Keshavji Manekchand, the respondent gave evidence that the proposal for direct insurance was received before the proposal for re-insurance, and that the reason why the latter proposal was refused was that Mr. Iyer and the respondent, having discussed the matter together, agreed that there was no object in accepting a re-insurance proposal when the appellant company had already got a direct proposal for a larger amount. The learned Judge, however, wholly disbelieved this story and found that the facts were as set out above. The respondent went so far as to suggest in his evidence that the word

"Decline" and the initials of Mr. Mody on the re-insurance proposal dated December 9, 1931, from the Bombay Mutual Society were not in fact written on the document at any time before the respondent's dismissal but were added by Mr. Mody at some subsequent date for the purpose of supporting the appellants' defence to the action. These suggestions also were wholly rejected by the learned trial Judge.

As regards the interview of December 21, 1931, which resulted in the respondent's dismissal, it may be noted here as a remarkable fact that from first to last the respondent has given no intelligible explanation, apart from the false one abovementioned, of his conduct in recommending the risk (in the form of a ten years' endowment policy) without any reference to the fact that Mr. Mody had to his knowledge and for a good reason declined the re-insurance on the same life. It is not in dispute that at the interview of December 21, Mr. Mody, with the consent of Mr. Iyer, who was present throughout, began by asking for an explanation of the respondent's conduct. It cannot be doubted that his conduct called for explanation. He in fact gave none. His own account of the interview at the trial, even if it could be believed is wholly unsatisfactory. According to him when he came into the room Mr. Mody was very angry and banged his fist on the table and asked in a loud tone why he had recommended Keshavji Manekchand's proposal to the directors and that he himself said that since the proposal had been received in the office it ought to be put before the directors, that Mr. Mody thereupon said in a very loud tone, "I do not want this business to be accepted," to which the respondent replied that it was his duty to put forward the papers and that he was not taking any instructions from Mr. Mody. The evidence of Mr. Mody and Mr. Iyer, which the Judge accepted, was as set out above. The main point of difference between their version and the respondent's was that they denied that Mr. Mody had spoken angrily and they spoke of the rudeness and violent manner displayed by the respondent.

Even if their Lordships could accept the view that the respondent was entitled to conduct the Life Insurance business without question or interference from Mr. Mody, as to which they have above expressed their opinion, the respondent's behaviour according to his own statement was intolerable. It is important to remember that on the one hand Mr. Mody had only a week before told the respondent that Keshavji was his next door neighbour and that he did not approve of the risk. It could not be in any way proper to approve the risk and to forward it to the directors—which really meant to Mr. Lalji Naranji—without a statement of these facts. Even if Mr. Mody had no authority in the matter, his view, founded on special knowledge, ought not to have been in effect suppressed. In the second place Mr. Iyer, who was admittedly the official in charge of the Life Department and the respondent's superior, was present and if the latter really doubted the authority of Mr. Mody to require an explanation, what could be easier than to ask Mr. Iyer if he authorised the question and desired an answer? According to his own account the respondent refused to explain his conduct, and Mr. Mody and Mr. Iyer might very well come to the conclusion that it was not capable of any proper or satisfactory explanation.

As regards the explanation which Mr. Mody asked for it should be added that he was clearly in a position which required him to make inquiries as to every matter touching discipline and the rightful conduct of business. To take a strong illustration, suppose that there was ground for thinking that an official had been bribed in relation to the acceptance of a risk, could anyone doubt that it would be the duty of the managing governor to make inquiries and to submit the result of them to the managing agents? The notion that the circular (or any possible construction of it) furnishes an excuse for the respondent's refusal to explain or to defend his action and omission in relation to the risk to both Mr. Mody and Mr. Iyer seems to them to be without foundation.

Their Lordships do not take the view that the outrageous conduct of the respondent at the trial, including his inventions of interviews, his false charges and the tissues of falsehoods of which the trial Judge has found him guilty, has any direct bearing other than an evidential one, on the question whether he was properly dismissed; but they must observe that, in so far as anything turns on the correctness of the view formed by Mr. Mody and Mr. Iyer as to whether it was reasonably possible for the company any longer to employ the respondent, his behaviour in the witness-box makes it exceedingly difficult to conclude that their view was a wrong one.

If there were any doubt as to the real meaning of the respondent's conduct at the interview it would be removed by the letter written by his attorney (on January 13, 1932) after his dismissal. They state their client's view as follows:—On the 21st ultimo Mr. Mody tried to interfere with our client's work and to dictate to him certain things which he had no right to do and which in our client's opinion was a most improper thing to do. Our client naturally did not agree with Mr. Mody's instructions. . . . . . "Our client rightly resented this interference from Mr. Mody and stated to him that he was not prepared to take any instructions from him in the matter. Their Lordships find it impossible to understand how the managing governor of the company could properly supervise the business if a Subordinate Officer chose not only to adopt this attitude, but in effect to overrule

the decision of his superior in a case in whch the latter had peculiar means of knowledge as to the danger of accepting a risk. Nor did the respondent improve matters by instructing his solicitors on February 1, 1932, to write a letter containing serious charges against Mr. Mody of giving "improper instructions" to the respondent —charges which there was no attempt whatever to justify at the trial.

Their Lordships recognise that the immediate dismissal of an employee is a strong measure and they have anxiously considered the evidence with a view to determine the question whether the learned trial Judge was right in his finding that the respondent was guilty of gross negligence which, coupled with his conduct at the interview of December 21, was sufficient to justify his dismissal. On the one hand it can only be in exceptional circumstances that an employer is acting properly in summarily dismissing an employee on his committing a single act of negligence; on the other, their Lordships would be very loath to assent to the view that a single outbreak of bad temper accompanied it may be with regrettable language is a sufficient ground for dismissal. The learned Chief Justice was stating a proposition of mere good sense when he observed that in such cases one must apply the standards of men and not of angels and remember that men are apt to show temper when reprimanded. Placing, however, all proper weight on these considerations their Lordships have yet to determine in view of the facts found by the trial Judge, apart of course from the vital finding that the circumstances justified dismissal, whether the misconduct of the respondent was not such as to interfere with and to prejudice the safe and proper conduct of the business of the company and, therefore, to justify immediate dismissal.

It must be remembered that the test to be applied must vary with the nature of the business and the position held by the employee and that decisions in other cases are of little value. We have here to deal with the business of life insurance. A mistake in accepting a risk may lead to a very considerable loss, and repetition of such mistake may lead to disaster. The undertaking is one in which the undertaking of each individual risk is necessarily hazardous: and it is only by unremitting care and prudence that the business can profitably be carried on. If an officer of a life insurance company whatever his motive may be, withholds from his superiors information which will, in all probability, lead them to refuse a risk, and *à fortiori* if it is one of exceptional character and magnitude, it would seem to be very difficult for his superiors to be confident that he will in the future properly carry out the important duties entrusted to him. In other words, if a person in charge of the life assurance department subject to the supervision of superior officers, shows by his conduct or his negligence that he can no longer command their confidence, and if when an explanation is called for he refuses apology or amendment, it seems to their Lordships that his immediate dismissal is justifiable.

Some at least of the above considerations seem not to have been present to the minds of the learned Judges on the appeal to the High Court. In particular their Lordships cannot agree that the respondent was guilty of a mere error of judgment. They are satisfied from the evidence given at the trial that the respondent recommended the issue of the endowment policy, well knowing that the managing governor would have rejected it, and in the hope or the expectation that Mr. Iyer would not remember the facts as to the re-insurance proposal. They take a serious view as to the interview of December 21, and they draw a different inference from that of the learned Judges as to the true meaning of the respondent's behaviour. Further and with all respect to the learned Judges in the Appeal Court they are of opinion that it is a mistake to consider the action of the respondent in approving the risk and his conduct at the interview as if these two matters could separately by excused or explained. They are in truth inseparable from the point of view of the action of Mr. Mody and Mr. Iyer in giving the notice of dismissal. On a review of the whole case their Lordships must come to the conclusion that the learned trial Judge was justified in his view of the facts and in the conclusion at which he arrived.

For the reasons above stated their Lordships are of opinion that the appeal should be allowed, the decree of the Division Bench set aside, and the decree of the trial Judge restored. The respondent will pay to the appellants their costs of the appeal to the Division Bench and of this appeal in addition to the costs awarded by the trial Court. They will humbly advise His Majesty accordingly.

Appeal allowed.

Solicitors for the Appellants—*Messrs. G. F. Turner & Sons.*

Solicitors for the Respondent—*Messrs. T. L. Wilson & Co.*

[PRIVY COUNCIL]

[Appeal from Singapore]

LORDS ATKIN, TOMLIN and THANKERTON

November 14, 1933

MALAYAN TOBACCO DISTRIBUTORS, LTD.

v.

UNITED KINGDOM TOBACCO CO., LTD.

[PRIVY COUNCIL APPEAL No. 96 of 1932]

Passing off action—Brand well-known to customers in Market—Probability of deception—Finding of fraud.